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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	10/816,712	
	Filing Date	04/02/2004	
	First Named Inventor	Piper	
	Art Unit	3765	
	Examiner Name	Lindsey, Rodney M.	
Total Number of Pages in This Submission	20	Attorney Docket Number	AFF014USPT02

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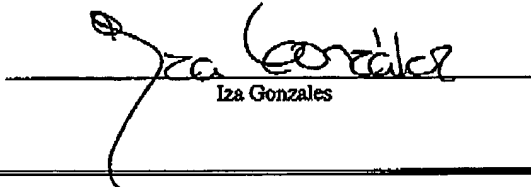
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<b>APPEAL BRIEF</b>			Docket No. <b>AFF014USPT02</b>
Serial No. <b>10/816,712</b>	Filing Date <b>04/02/2004</b>	Examiner <b>Lindsey, Rodney M</b>	Group Art Unit <b>3765</b>
Applicant:	<b>Dennis Piper</b>		
Invention:	<b>RETENTION SYSTEM FOR HEADGEAR</b>		

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Alexandria, VA 22313-1450

Dear Sir:

This Appeal Brief is filed on appeal from the decision of the Examiner dated April 6, 2006 rejecting claims 1-18 and 20 in the above-referenced patent application.

**REAL PARTY IN INTEREST**

The real party in interest in connection with this appeal is Full90 Sports, Inc. as assignee of the entire right, title and interest in the application from the inventors Dennis Piper, John Lampe and William Cleveland. The assignment is recorded at reel/frame 014681/0001.

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### RELATED APPEALS AND INTERFERENCES

Appellant and appellant's legal representative are unaware of any other appeal or interference which will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

### STATUS OF CLAIMS

The application was filed on April 2, 2004 with claims 1-20. Claims 1-8, 13, 14, 17 and 20 were amended, and claim 19 canceled in an Amendment and Response originally filed on January 30, 2006 and filed again on February 7, 2006 in response to a Notice of Non-Compliant Amendment. Claims 1-18 and 20 remain pending in the application. Claims 1-18 and 20 have been finally rejected. No claims have been allowed.

The rejection of claims 1-18 and 20 is appealed. A copy of the claims involved in this appeal is provided in the Appendix section of this Appeal Brief.

### STATUS OF AMENDMENTS

No amendment has been filed subsequent to final rejection of the appealed claims.

### SUMMARY OF CLAIMED SUBJECT MATTER

A First Embodiment of the Present Claimed Invention (claims 1-8) is a protective headguard (200) to be worn on a human head (100). The headguard (200) includes a protective pad (215) and a retention element (217) and (218) cooperatively attached to the protective pad (215), with the retention element (217) and (218) embodying at least two separate and distinct circumferential lines of retention (111) and (112) intersecting at diametric points of intersection [(102) in Figure 1d and (223) in Figure 2a] when the headguard (200) is worn on the head (100). [Paragraphs (0136) - (0144) and Figures 1d and 2a].

A Second Embodiment of the Present Claimed Invention (claims 9-13) is a protective headguard (200) to be worn on a human head (100). The headguard (200) includes a protective pad (215) and a pair of separate and distinct retention elements (217) and (218) attached to the protective pad (215) and intersecting at diametric points of intersection (223). [Paragraphs (0136) - (0144) and Figure 2a].

A Third Embodiment of the Present Claimed Invention (claims 14-18) includes a front protective piece (315) and a rear protective piece (316) including a plurality of pads (340), (341), (342) and (343), (344), (345) capable of shifting relative to one another. [Paragraph (0148) and Figures 3a and 3b].

A Fourth Embodiment of the Present Claimed Invention (claim 20) includes a front piece (415) and a rear piece (416) pivotally attached to one another at diametrically opposed pivot points (452) whereby the pieces (415) and (416) may be independently pivoted about the pivot points (452). The front and rear pieces (415) and (416) are constructed to protect a wearer against physical injury from a blow to the head (100). [Paragraphs (0149) - (0150) and Figure 4].

#### GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. The rejection of claims 1-4 and 6-12 as anticipated by Gwon (United States Patent No. 4,068,323).
2. The rejection of claims 1, 5-9, 12 and 13 as anticipated by Morgan (United States Patent No. 4,279,037).
3. The rejection of claims 1, 6, 9 and 12 as anticipated by Mattes (054) (United States Patent No. 4,741,054).
4. The rejection of claim 20 as anticipated by Wallman (United States Patent No. 1,638,756).

5. The rejection of claims 14-16 and 18 as obvious over Steffen (United States Patent No. 3,171,133) in view of Lampe et al. (399) (United States Patent No. 6,397,399).

6. The rejection of claim 17 as obvious over Steffen (United States Patent No. 3,171,133) in view of Lampe et al. (399) (United States Patent No. 6,397,399) and further in view of Mattes (054) (United States Patent No. 4,741,054).

#### ARGUMENT

#### ***Objections/Rejections Under 35 U.S.C. § 102***

1.0 *The Examiner has rejected claims 1-4 and 6-12 as anticipated by Gwon.*

#### SUMMARY OF CITED REFERENCE

Gwon (United States Patent No. 4,068,323) discloses a protective helmet to be worn on a human head. The helmet includes a protective pad and a pair of straps cooperatively attached to the back of the protective pad. The protective pad and straps embody two separate and distinct circumferential lines of retention which do NOT intersect when the helmet is worn on the head.

#### SUMMARY OF CLAIMED INVENTION

A First Embodiment of the Present Claimed Invention (claims 1-8) is a protective headguard to be worn on a human head. The headguard includes a protective pad and a retention element cooperatively attached to the protective pad, with the retention element embodying at least two separate and distinct diametrically intersecting circumferential lines of retention when the headguard is worn on the head.

A Second Embodiment of the Present Claimed Invention (claims 9-13) is a protective headguard to be worn on a human head. The headguard includes a protective pad and a pair of separate and distinct diametrically intersecting retention elements attached to the protective pad.

## LEGAL BASIS

An anticipation rejection under 35 U.S.C. § 102 requires that the cited reference(s) disclose each and every element of the claimed invention. *See, Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); *Kloster Speedsteel AB et al. v. Crucible Inc. et al.*, 230 U.S.P.Q. 81, 84 (Fed. Cir. 1986). A reference anticipates a claim only when the reference discloses each and every element recited in the claim. *See, Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051 (Fed. Cir. 1987) and M.P.E.P. §2131. Accordingly, the "exclusion of a claimed element from a prior art reference is enough to negate anticipation by that reference." *Atlas Powder Co. v. E.I. duPont De Nemours & Co.*, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984).

*GWON DOES NOT DISCLOSE EACH AND  
EVERY ELEMENT OF THE CLAIMED INVENTION.*

The First Embodiment of the Present Claimed Invention includes at least two separate and distinct *diametrically intersecting* circumferential lines of retention when the headguard is worn on the head. These circumferential lines of retention are NOT imaginary lines or projections, but constitute a tangible feature on the headgear. Similarly, the Second Embodiment of the Present Claimed Invention includes a pair of separate and distinct *diametrically intersecting* retention elements attached to the protective pad. The helmet of Gwon includes two separate and distinct circumferential lines of retention, but these lines of retention do NOT intersect when the helmet is worn on the head. Withdrawal of this rejection is respectfully requested.

2.0 *The Examiner has rejected claims 1, 5-9, 12 and 13 as anticipated by Morgan.*

## SUMMARY OF CITED REFERENCE

Morgan (United States Patent No. 4,279,037) discloses a protective helmet to be worn on a human head. One embodiment of the helmet (represented by FIG 1) includes a pair of ear pads and a plurality of straps attached at each end to one of the ear pads. The straps are angularly spaced about each ear pad such that NO circumferential lines of retention are formed when the

helmet is worn on the head. Another embodiment of the helmet (represented by FIGs 8 and 9) further includes bearings (60) concentrically located within each of the ear pads through which an elongated strip of material is looped and returned to form dual side-by-side retention straps. While Morgan does not teach or suggest such an arrangement, the straps formed by this technique could - by coincidence - form circumferential lines of retention (*e.g.*, one strap formed from a first strip and one strap formed from a second strip may be configured and arranged to form a first circumferential line of retention, with the other strap formed from the first strip and the other strap formed from the second strip configured and arranged to form a second circumferential line of retention), but such circumferential lines of retention would be physically and functionally interconnected and interrelated.

#### SUMMARY OF CLAIMED INVENTION

A First Embodiment of the Present Claimed Invention (claims 1-8) is a protective headguard to be worn on a human head. The headguard includes a protective pad and a retention element cooperatively attached to the protective pad, with the retention element embodying at least two separate and distinct diametrically intersecting circumferential lines of retention when the headguard is worn on the head.

A Second Embodiment of the Present Claimed Invention (claims 9-13) is a protective headguard to be worn on a human head. The headguard includes a protective pad and a pair of separate and distinct diametrically intersecting retention elements attached to the protective pad.

#### LEGAL BASIS

An anticipation rejection under 35 U.S.C. § 102 requires that the cited reference(s) disclose each and every element of the claimed invention. *See, Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); *Kloster Speedsteel AB et al. v. Crucible Inc. et al.*, 230 U.S.P.Q. 81, 84 (Fed. Cir. 1986). A reference anticipates a claim only when the reference discloses each and every element recited in the claim. *See, Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051 (Fed. Cir. 1987) and M.P.E.P. §2131. Accordingly, the "exclusion of a claimed element from a prior art reference is enough to negate anticipation by

that reference.” Atlas Powder Co. v. E.I. duPont De Nemours & Co., 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984).

*MORGAN DOES NOT DISCLOSE EACH AND  
EVERY ELEMENT OF THE CLAIMED INVENTION.*

The First Embodiment of the Present Claimed Invention includes at least two separate and distinct diametrically intersecting circumferential lines of retention when the headguard is worn on the head. Similarly, the Second Embodiment of the Present Claimed Invention includes a pair of separate and distinct diametrically intersecting retention elements attached to the protective pad. The helmets disclosed by Morgan do NOT have a circumferential line of retention. Furthermore, even in the event the straps on the embodiment of the helmet represented by FIGs 8 and 9 are coincidentally arranged to form circumferential lines of retention, such circumferential lines of retention would NOT be separate and distinct. Withdrawal of this rejection is respectfully requested.

3.0 *The Examiner has rejected claims 1, 6, 9 and 12 as anticipated by Mattes (054).*

#### SUMMARY OF CITED REFERENCE

**Mattes (054)** (United States Patent No. 4,741,054) discloses a chin cup for use with military headgear. Mattes (054) attaches the chin cup to the headgear with a pair of overlapping chin straps (20 and 26). Chin strap 20, as shown in FIG 1, does NOT form a circumferential line of retention as the headgear has an open crown. Furthermore, even in the event the chin straps were to form circumferential lines of retention the circumferential lines of retention would NOT diametrically intersect (*i.e.*, the points of intersection do NOT occur across the diameter of a circumferential line of retention).

#### SUMMARY OF CLAIMED INVENTION

A First Embodiment of the Present Claimed Invention (claims 1-8) is a protective headguard to be worn on a human head. The headguard includes a protective pad and a retention



element cooperatively attached to the protective pad, with the retention element embodying at least two separate and distinct diametrically intersecting circumferential lines of retention when the headguard is worn on the head.

A Second Embodiment of the Present Claimed Invention (claims 9-13) is a protective headguard to be worn on a human head. The headguard includes a protective pad and a pair of separate and distinct diametrically intersecting retention elements attached to the protective pad.

#### LEGAL BASIS

An anticipation rejection under 35 U.S.C. § 102 requires that the cited reference(s) disclose each and every element of the claimed invention. *See, Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); *Kloster Speedsteel AB et al. v. Crucible Inc. et al.*, 230 U.S.P.Q. 81, 84 (Fed. Cir. 1986). A reference anticipates a claim only when the reference discloses each and every element recited in the claim. *See, Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051 (Fed. Cir. 1987) and M.P.E.P. §2131. Accordingly, the "exclusion of a claimed element from a prior art reference is enough to negate anticipation by that reference." *Atlas Powder Co. v. E.I. duPont De Nemours & Co.*, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984).

#### *MATTES (054) DOES NOT DISCLOSE EACH AND EVERY ELEMENT OF THE CLAIMED INVENTION.*

The First Embodiment of the Present Claimed Invention includes at least two separate and distinct diametrically intersecting circumferential lines of retention when the headguard is worn on the head. Similarly, the Second Embodiment of the Present Claimed Invention includes a pair of separate and distinct diametrically intersecting retention elements attached to the protective pad. The helmet disclosed by Morgan does NOT have two circumferential lines of retention. Furthermore, even in the event the chin straps were to form circumferential lines of retention the circumferential lines of retention would NOT diametrically intersect (*i.e.*, the points of

intersection would NOT occur across the diameter of a circumferential line of retention).

Withdrawal of this rejection is respectfully requested.

4.0 *The Examiner has rejected claim 20 as anticipated by Wallman.*

#### SUMMARY OF CITED REFERENCE

**Wallman** (United States Patent No. 1,638,756) discloses an ornamental head dress having a front section and a back section, each having an upper band and a lower band. The front and back sections are adjustably connected at diametrically opposed points of attachment for fitting of the head dress.

#### SUMMARY OF CLAIMED INVENTION

A Fourth Embodiment of the Present Claimed Invention (claim 20) includes a front piece and a rear piece pivotally attached to one another at diametrically opposed pivot points whereby the pieces may be independently pivoted about the pivot points. The front and rear pieces are constructed to protect a wearer against physical injury from a blow to the head.

#### LEGAL BASIS

An anticipation rejection under 35 U.S.C. § 102 requires that the cited reference(s) disclose each and every element of the claimed invention. See, Hybritech Inc. v. Monoclonal Antibodies, Inc., 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); Kloster Speedsteel AB et al. v. Crucible Inc. et al., 230 U.S.P.Q. 81, 84 (Fed. Cir. 1986). A reference anticipates a claim only when the reference discloses each and every element recited in the claim. See, Verdegaal Bros. v. Union Oil Co. of California, 2 U.S.P.Q.2d 1051 (Fed. Cir. 1987) and M.P.E.P. §2131. Accordingly, the "exclusion of a claimed element from a prior art reference is enough to negate anticipation by that reference." Atlas Powder Co. v. E.I. duPont De Nemours & Co., 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984).

*WALLMAN DOES NOT DISCLOSE EACH AND  
EVERY ELEMENT OF THE CLAIMED INVENTION*

The Fourth Embodiment of the Present Claimed Invention includes front and rear pieces constructed to protect a wearer against physical injury from a blow to the head. The head dress of Wallman is designed to be merely decorative. Withdrawal of this rejection is respectfully requested.

5.0 *The Examiner has rejected claims 14-16 and 18 as obvious over Steffen in view of Lampe et al. (399).*

SUMMARY OF CITED REFERENCE

**Steffen** (United States Patent No. 3,171,133) discloses a protective helmet having a one-piece frontal pad and a one-piece posterior pad interconnected by upper and lower elastic straps.

**Lampe et al. (399)** (United States Patent No. 6,397,399) discloses a protective headguard comprising a headband with a multi-piece frontal pad and a single-piece posterior pad retained within pockets in the headband.

SUMMARY OF CLAIMED INVENTION

A Third Embodiment of the Present Claimed Invention (claims 14-18) includes a front protective piece and a rear protective piece including a plurality of pads capable of shifting relative to one another.

LEGAL BASIS

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation; either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim

limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, NOT in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). See, M.P.E.P. § 2143.

As to the first criteria, it is necessary to ascertain whether or not the reference motivates one of ordinary skill in the relevant art, having the reference before him, to make the proposed substitution, combination, or modification. In re Linter, 458 F.2d 1013, 173 U.S.P.Q. 560, 562 (CCPA 1972). Obviousness can only be established where there is some teaching, suggestion or motivation in the prior art or in the knowledge generally available to one of ordinary skill in the art, to combine the references and produce the claimed invention. In re Fine, 837 F.2d 1071, 5 U.S.P.Q. 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 U.S.P.Q.2d 1941 (Fed. Cir. 1992). See, M.P.E.P. § 2143.01.

*STEFFEN AND LAMPE ET AL DO NOT DISCLOSE EACH AND  
EVERY ELEMENT OF THE CLAIMED INVENTION*

The Third Embodiment of the Present Claimed Invention includes a rear protective piece with a plurality of pads capable of shifting relative to one another. The protective headguards of Steffen and Lampe et al. both have a one-piece posterior pad. Withdrawal of this rejection is respectfully requested.

**6.0** *The Examiner has rejected claim 17 as obvious over Steffen in view of Lampe et al. (399) and further in view of Mattes (054).*

SUMMARY OF CITED REFERENCE

**Steffen** (United States Patent No. 3,171,133) discloses a protective helmet having a one-piece frontal pad and a one-piece posterior pad interconnected by upper and lower elastic straps.

**Lampe et al. (399)** (United States Patent No. 6,397,399) discloses a protective headguard comprising a headband with a multi-piece frontal pad and a single-piece posterior pad retained within pockets in the headband.

**Mattes (054)** (United States Patent No. 4,741,054) discloses a chin cup for use with military headgear. **Mattes (054)** attaches the chin cup to the headgear with a pair of overlapping chin straps (20 and 26). The headgear depicted by **Mattes (054)** is a single continuous piece [12].

#### SUMMARY OF CLAIMED INVENTION

A Third Embodiment of the Present Claimed Invention (claims 14-18) includes a front protective piece and a rear protective piece including a plurality of pads capable of shifting relative to one another.

#### LEGAL BASIS

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation; either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, NOT in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). *See*, M.P.E.P. § 2143.

As to the first criteria, it is necessary to ascertain whether or not the reference motivates one of ordinary skill in the relevant art, having the reference before him, to make the proposed substitution, combination, or modification. In re Linter, 458 F.2d 1013, 173 U.S.P.Q. 560, 562 (CCPA 1972). Obviousness can only be established where there is some teaching, suggestion or motivation in the prior art or in the knowledge generally available to one of ordinary skill in the art, to combine the references and produce the claimed invention. In re Fine, 837 F.2d 1071, 5 U.S.P.Q. 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 U.S.P.Q.2d 1941 (Fed. Cir. 1992). *See*, M.P.E.P. § 2143.01.

*STEFFEN, LAMPE ET AL. (399) AND MATTES (054) DO NOT DISCLOSE EACH AND EVERY ELEMENT OF THE CLAIMED INVENTION*

The Third Embodiment of the Present Claimed Invention includes a rear protective piece with a plurality of pads capable of shifting relative to one another. The protective headguards of Steffen, Lampe et al. and Mattes (054) each have a one-piece posterior pad. Withdrawal of this rejection is respectfully requested.

### CONCLUSION

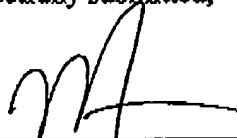
Applicant respectfully submits that all pending claims (claims 1-18 and 20) are in condition for allowance.

Respectfully submitted,

Date

*06 June 06*

By



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**CLAIMS APPENDIX****PENDING CLAIMS**

*United States Patent Application  
Serial No. 10/816,712*

1. A protective headguard to be worn on a human head, comprising a protective pad and a retention element cooperatively attached to the protective pad wherein the retention element embodies at least two separate and distinct tensioned and diametrically intersecting circumferential lines of retention when worn on the head.
2. The protective headguard of claim 1 wherein at least a segment of each circumferential line of retention is elastic.
3. The protective headguard of claim 2 wherein at least a segment of each circumferential line of retention is an elastic strap.
4. The protective headguard of claim 3 wherein the headguard further includes a length adjustment means cooperatively attached to each strap for permitting an adjustment of the length of each strap.
5. The protective headguard of claim 1 wherein the lines of retention intersect at intersection points and the intersection points are positioned proximate each temple of a wearer when the protective headguard is worn on the head.
6. The protective headguard of claim 1 wherein the headguard is configured and arranged so that one circumferential line of retention runs above an occipital bone of a wearer and another circumferential line of retention runs below the occipital bone of a wearer.

7. The protective headguard of claim 1 wherein the angle at which the circumferential lines of retention intersect when the headguard is worn is adjustable.
8. The protective headguard of claim 1 wherein the lines of retention intersect at intersection points and the intersection points may be circumferentially shifted.
9. A protective headguard to be worn on a human head, comprising a protective pad and a pair of separate and distinct, tensioned and diametrically intersecting retention elements attached to the protective pad.
10. The protective headguard of claim 9 wherein at least a segment of each retention element is elastic.
11. The protective headguard of claim 9 wherein the retention elements are elastic.
12. The protective headguard of claim 9 wherein the retention elements have a length and include a length adjustment means cooperatively attached to each retention element for permitting an adjustment in the tension of each retention element when the protective headguard is worn on the head.
13. The protective headguard of claim 9 wherein the protective pad and retention element are configured and arranged such that the diametric points of intersection of the retention elements are positioned proximate each temple of a wearer when the protective headguard is worn on the head.
14. A protective headguard to be worn on a human head, comprising:
  - (a) a rear protective piece including a plurality of pads capable of shifting relative to one another,
  - (b) a front protective piece,
  - (c) and a retention element interconnecting the front protective piece and the rear protective piece.



15. The protective headguard of claim 14 wherein the retention element is elastic.
16. The protective headguard of claim 15 wherein the retention element defines a strap.
17. The protective headguard of claim 14 wherein the retention element includes at least one strap and a length adjustment means cooperatively attached to the strap for permitting an adjustment of the length of the strap.
18. The protective headguard of claim 14 wherein the front protective piece includes a plurality of pads capable of shifting relative to one another.
20. A protective headguard to be worn on a human head, comprising a front piece and a rear piece wherein the front piece and the rear piece are constructed to protect a wearer against physical injury from a blow to the head and pivotally attached to one another at diametrically opposed pivot points whereby the front piece and the rear piece may be independently pivoted about the pivot points.

**EVIDENCE APPENDIX**

NONE

**RELATED PROCEEDINGS APPENDIX**

NONE

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